

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TERRANCE WAYNE,

Plaintiff,

v.

Civil Case No. 13-14495
Honorable Linda V. Parker

DANIEL HEYNS, BRAD PURVES,
and LLOYD RAPELJE,¹

Defendants.

**OPINION AND ORDER (1) ADOPTING MAGISTRATE JUDGE'S
JANUARY 16, 2015 REPORT AND RECOMMENDATION [ECF NO. 40];
(2) GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
[ECF NO. 23]; AND (3) DENYING AS MOOT REMAINING MOTIONS
[ECF NOS. 28, 30, 34, 35, & 38]**

Plaintiff, currently a Michigan Department of Corrections' prisoner, filed this lawsuit against Defendants claiming violations of his civil rights under 42 U.S.C. § 1983 based on the diet provided to inmates. The matter has been referred to Magistrate Judge Mona K. Majzoub for all pretrial proceedings, including a hearing and determination of all non-dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(A) and/or a report and recommendation on all dispositive matters pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 7.) Defendants filed a motion for summary judgment on June 26, 2014. (ECF No. 23.) The motion has been fully

¹ Defendant Rapelje was terminated as a party on July 8, 2014, pursuant to this Court's decision granting his motion to dismiss. (See ECF No. 26.)

briefed. The parties have filed additional pretrial motions which currently remain pending.²

On January 16, 2015, Magistrate Judge Majzoub issued an R&R in which she recommends that the Court grant Defendants' summary judgment motion and deny the remaining pending motions as moot. (ECF No. 40.) Magistrate Judge Majzoub concludes that the diet provided to inmates does not violate Plaintiff's Eighth Amendment rights because the evidence shows that it affords adequate nutrition to maintain normal health. (*Id.* at Pg ID 403-05.) She finds Plaintiff's assertion that he cannot "exercise vigorously off" the calories provided insufficient to state an Eighth Amendment claim. (*Id.* at 404.) And while Plaintiff claims that the diet is high in sodium and sugar which causes high cholesterol and is dangerous to diabetics, the magistrate judge notes that Plaintiff is not diabetic and provides no evidence to suggest that he has high cholesterol or that the foods on the menu are high in cholesterol. (*Id.*)

At the conclusion of her R&R, Magistrate Judge Majzoub advises the parties that they may object to and seek review of the R&R within fourteen days of service upon them. (*Id.* at Pg ID 407.) She further specifically advises the parties that

² Specifically, the following additional motions pending are: (1) Plaintiff's motion to appoint counsel (ECF No. 28); (2) Defendants' motion to stay discovery (ECF No. 30); (3) Plaintiff's motion to convert this action to a class action (ECF No. 34); (4) Plaintiff's motion to compel discovery (ECF No. 35); and, (5) Plaintiff's motion for Defendants to provide a 3000 calorie diet (ECF No. 38).

“[f]ailure to file specific objections constitutes a waiver of any further right to appeal.” (*Id.*) Neither party filed objections to the R&R.

This Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Majzoub.

Accordingly,

IT IS ORDERED, that Defendants’ motion for summary judgment (ECF No. 23) is **GRANTED**;

IT IS FURTHER ORDERED, that Defendants’ outstanding motion (ECF No. 30) and Plaintiff’s outstanding motions (ECF Nos. 28, 34, 35, and 38) are **DENIED AS MOOT**.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: February 20, 2015

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, February 20, 2015, by electronic and/or U.S. First Class mail.

s/ Richard Loury
Case Manager